

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America

Plaintiff,

v.

Oliver Christopher Ingram,

Defendant.

Case No. 10-20565

Honorable Nancy G. Edmunds

**ORDER DENYING DEFENDANT'S MOTION TO VACATE SENTENCE UNDER 28
U.S.C. § 2255 [41] AND DENYING DEFENDANT'S MOTION TO STAY [49]**

This matter comes before the Court on Defendant's motion to vacate his sentence under 28 U.S.C. § 2255 and his subsequent motion to stay the Court's ruling on his § 2255 petition. For the reasons stated below, Defendant's motions are DENIED.

I. Background

On November 7, 2011, Defendant pled guilty to possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1). The Court sentenced Defendant to a term of 151 months. Because Defendant had several prior controlled substance offense convictions, the Court applied the Sentencing Guidelines enhancement under § 4B1.1. On April 25, 2016, Defendant filed this motion to vacate his sentence under 28 U.S.C. § 2255.¹

II. Standard

To obtain relief under § 2255, Petitioner must show: that the sentence was imposed in violation of the Constitution or laws of the United States; that the court was without

¹ Defendant previously sought permission to file a second or successive § 2255 motion. Because he had not filed a first § 2255 motion, the Sixth Circuit denied Defendant's request as unnecessary and transferred the case back to this Court. (Dkt. 47.)

jurisdiction to impose such a sentence; that the sentence was in excess of the maximum authorized by law; or that it is otherwise subject to collateral attack. 28 U.S.C. § 2255(a).

III. Analysis

Defendant argues that his sentence should be vacated in light of the Supreme Court's recent decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). In *Johnson*, the Supreme Court held that the violent felony residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), is unconstitutionally vague. 135 S. Ct. at 2557-63. Here, however, Defendant was not sentenced under the residual clause invalidated by *Johnson*. Rather, Defendant's sentence was enhanced due to prior "controlled substance offenses," as defined in § 4B1.2(b) of the Sentencing Guidelines. And while the Sixth Circuit has extended the holding in *Johnson* to the identically-worded residual clause of § 4B1.2(a)(2), see *United States v. Pawlak*, 822 F.3d 902 (6th Cir. 2016),² several courts in this Circuit agree that the controlled substance provision remains unaffected. See, e.g., *Garza v. United States*, Nos. 14-20177, 16-12402, 2016 WL 3682911, at *2 (E.D. Mich. July 11, 2016) (noting that the defendant's prior conviction was "a controlled substance offense, which was unaffected by *Johnson*"); *United States v. Fisher*, Nos. 5:07-41, 5:16-238, 2016 WL 3906644, at *2-3 (E.D. Ky. July 14, 2016) (finding *Johnson* inapplicable to the defendant's situation where his sentence was enhanced in part for prior controlled substance offenses); *Dowlin v. United States*, No. 3:16-00676, 2016 WL 3905672, at *3 (M.D. Tenn. July 19, 2016) ("The *Johnson* decision does not call into question the definition

²As noted below, however, this question is currently pending before the Supreme Court. See *Beckles v. United States*, No. 15-8544.

of ‘controlled substance offense’ under the Career Offender guideline.”). The Court concludes that Defendant’s sentence is unaffected by *Johnson*.

In addition, contrary to Defendant’s argument, Defendant’s prior convictions properly qualified under § 4B1.2(b)’s definition of “controlled substance offense,” which requires an offense to be punishable by imprisonment for a term exceeding one year—not ten years, as required to qualify under 18 U.S.C. § 924(e) as a “serious drug offense.” Finally, Defendant’s request for a hearing on his § 2255 motion is denied. A hearing is not warranted here, as the “the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b).

IV. Motion to Stay

Defendant requests that the Court stay its ruling on his § 2255 petition pending the Supreme Court’s decision in *Beckles v. United States*, No. 15-8544. In *Beckles*, the Supreme Court will consider whether the holding in *Johnson* applies to the violent felony residual clause of the Sentencing Guidelines, § 4B1.2(a)(2). Defendant’s sentence was not enhanced under the residual clause of § 4B1.2(a)(2) and thus is unlikely to be affected in by the decision in *Beckles* in any way. Accordingly, a stay is not appropriate.

V. Conclusion

For the above-stated reasons, Defendant’s motions are DENIED.

SO ORDERED.

S/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: August 9, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 9, 2016, by electronic and/or ordinary mail.

S/Carol J. Bethel

Case Manager